IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1528 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

AMBALAL GOBARBHAI PARMAR

Appearance:

1. Special Civil Application No. 1528 of 2004

MR HARDIK C RAWAL for Petitioner No. 1

SERVED BY AFFIX.-(R) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 17/04/2004

ORAL JUDGEMENT

1. Raval, learned Counsel for the petitioner, states that the respondent is served by affixing the copy and

nobody appears on behalf of the respondent.

2. Upon hearing Mr.Raval for the petitioner, it appears that the present case is more or less on the same ground and on the same point as they were considered by this Court in SCA No.8080/2003 and allied matters, which have been disposed of as per the decision dated 11-2-2004. The only distinguishing feature would be that in the earlier group of petitions, the learned Counsel appearing for the concerned respondent workman/employee had declared before the Court that if the workmen concerned are allowed to withdraw the amount, which is alreayd deposited, the concerned employee is not claiming the interest over the ordered amount of gratuity. In the present case, since nobody is appearing on behalf of the respondent in spite of the service of notice of rule, the final order deserves to be modified accordingly. In the earlier group of petitions this Court had at para 10 it was observed as under:

> "10. In view of the aforesaid, these petitions are allowed, and the orders passed by the controlling authority as well as the appellate authority impugned in each of these petitions are quashed and set aside. However, it is further directed that the respondent-employees in the respective petitions shall be allowed to withdraw the principal amount as payment of gratuity, and the amount of interest out of the amount deposited by the Corporation shall be refunded to the Corporation by the Controlling Authority forthwith. The petitions are allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no orders as to costs."

3. In the present case, as observed earlier, no statement of the respondent workman is coming on record to abandon the claim of interest. If the reasoning recorded and the finding given by this Court in its judgement dated 11-2-20004 in SCA No.8080/2003 are considered and if the matter is examined accordingly, on the date when the controlling authority passed the order on 21-11-2002 it cannot be said that the gratuity amount was admissible and since the very order of the controlling authority is confirmed by the appellate authority in Appeal No.7/2003, the normal consequence would be to quash and set aside the orders passed by both the authorities and to remand the matter for reconsideration. However, it further appears that even

if the matter is remanded, the authority will have to consider the matter in light of the reasons recorded and the observations made by this Court in the aforesaid decision dated 11-2-2004. Therefore, I find that if the respondent herein declares before the Appellate Authority under Payment of Gratuity Act, stating that he is not claiming interest on the ordered amount of gratuity, then in that case, the respondent may be permitted to withdraw the amount by the Appellate Authority without further adjudicating the matter, but if the respondent fails to makes declaration within a reasonable time the Appellate authority will have to reconsider the whole case in light of the judgement dated 11-2-2004 passed by this Court in the above referred cases.

4. Under the above circumstances and in view of the reasons recorded in the decision dated 11-2-2004 in the above referred judgement and keeping in view the observations made hereinabove, I find that the following directions shall meet with the ends of justice:

4.1) The impugned order dated 21-11-2202 passed by the controlling authority and order dated 12-12-2003 passed by the appellate authority are quashed and set aside with the further directions that since the amount of gratuity with interest is already deposited by the petitioner with the appellate authority, if the respondent files declaration on oath before the appellate authority declaring that he is abandoning the right to claim interest, then in that case, the appellate authority shall allow the withdrawal of the principal amount of gratuity to the respondent herein and shall refund the amount of interest to the petitioner Corporation.

4.2) If the respondent fails to file such declaration as observed earlier, the appellate authority shall rehear the appeal No.7/2003 and shall decide the same in light of the observations made by this Court in the judgement dated 11-2-2004 in SCA No.8080/2003 and allied matters and shall render the decision in accordance with law as early as possible, preferably within a period of four months from the date of receipt of the writ of this Court.

5. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, no costs.

17-4-2004 (Jayant Patel, J.)

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